U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 16 October 2003

Case No: 2003-BLA 5173

In the Matter of

RAYMOND RIGGS,
Claimant

v.

ADDINGTON INCORPORATED,
Employer,

OHIO BUREAU OF WORKERS' COMPENSATION,
Carrier,

and

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS,
Party-in-Interest.

APPEARANCES:

RITA S. FUCHSMAN, Esquire
For the claimant

GREGORY JOHNSON, Esquire
For the employer/carrier

BEFORE: JOSEPH E. KANE
Administrative Law Judge

DECISION AND ORDER —DENYING BENEFITS

This proceeding arises from a claim for benefits under Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. § 901 *et seq.* (the Act). Benefits are awarded to coal miners who are totally disabled due to pneumoconiosis. Surviving dependents of coal miners whose deaths were caused by pneumoconiosis may also recover benefits. Pneumoconiosis, commonly known as black lung, is a chronic dust disease of the lungs arising from coal mine employment. 20 C.F.R. § 718.201(a) (2001).

On November 22, 2002, this case was referred to the Office of Administrative Law Judges for a formal hearing. Following proper notice to all parties, a hearing was held on July 17, 2003 in Chillicothe, Ohio. The Director's exhibits were admitted into evidence pursuant to 20 C.F.R. § 725.456, and the parties had full opportunity to submit additional evidence and to present closing arguments or post-hearing briefs.

The Findings of Fact and Conclusions of Law that follow are based upon my analysis of the entire record, arguments of the parties, and the applicable regulations, statutes, and case law. They also are based upon my observation of the demeanor of the witness who testified at the hearing. Although perhaps not specifically mentioned in this decision, each exhibit and argument of the parties has been carefully reviewed and thoughtfully considered. While the contents of certain medical evidence may appear inconsistent with the conclusions reached herein, the appraisal of such evidence has been conducted in conformance with the quality standards of the regulations.

The Act's implementing regulations are located in Title 20 of the Code of Federal Regulations, and section numbers cited in this decision exclusively pertain to that title. References to DX, CX, and EX refer to the exhibits of the Director, claimant, and employer, respectively. The transcript of the hearing is cited as "Tr." and by page number.

ISSUES

1. the length of the miner's coal mine employment;

2. whether the miner has pneumoconiosis as defined by the Act and regulations;

3. whether the miner's pneumoconiosis arose out of coal mine employment;

4. whether the miner is totally disabled; and

5. whether the miner's disability is due to pneumoconiosis;

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Factual Background and Procedural History

The Claimant, Raymond Riggs, was born on November 21, 1946. He has completed a seventh grade education. Mr. Riggs married Debra Williamson on December 13, 1992 and they divorced on November 17, 1997. They had no children who were under eighteen or dependent upon them at this time this claim was filed. (DX 1, 7).

The various medical reports of record indicate that Claimant suffers from dyspnea, chest pain, ankle edema, and occasional nocturnal dyspnea. (DX 9, EX 1) These reports also indicate a smoking history of at least 34 years at the rate of 1 to 1 and ½ packs of cigarettes per day. Claimant told Dr. Gifford that he quit smoking in 2000. However, Dr. Zaldivar notes in his report that the high carboxyhemoglobin level indicated by the arterial blood gas studies he

reviewed indicate a continued smoking habit. At the hearing, Claimant stated he quit smoking cigarettes three years earlier but continues to smoke an occasional cigar. (Tr. 14) He also stated that he is frequently around persons who do smoke. (Tr. 15) Accordingly, I find that Claimant has a smoking history of at least 34 years.

The medical reports of record also indicate that claimant suffers from back and leg pain. (DX 9, EX 1) Claimant stated at the hearing he had undergone surgery for artery replacement and hernia repair. (Tr. 16)

Mr. Riggs filed his application for black lung benefits on August 20, 2001. The Office of Workers' Compensation Programs issued a proposed preliminary denial on December 13, 2001. (DX 17) On July 2, 2002, the Office of Workers' Compensation Programs issued a proposed preliminary award of benefits. (DX 20) The Office of Workers' Compensation Programs issued a proposed decision and order award of benefits on October 9, 2002. (DX 22) Pursuant to Employer's request for a formal hearing, the case was transferred to the Office of Administrative Law Judges. (DX 23).

Coal Mine Employment

The duration of a claimant's coal mine employment is relevant to the applicability of various statutory and regulatory presumptions. At the hearing, the parties stipulated that Mr. Riggs worked for eighteen years in qualifying coal mine work. Based upon my review of the record, I accept the stipulation as accurate and credit claimant with eighteen years of coal mine employment. His last coal mine employment of one or more years of duration was with Addington Incorporated where he was exposed to occupational dust as a bull dozer operator working at a strip mining operation. (DX 5, TR. 13)

Medical Evidence

Medical evidence submitted under a claim for benefits under the Act is subject to two different requirements. First, medical evidence must be in "substantial compliance" with the applicable regulations' criteria for the development of medical evidence. *See* 20 C.F.R. § 718.101 to 718.107. The regulations address the criteria for chest x-rays, pulmonary function tests, physician reports, arterial blood gas studies, autopsies, biopsies, and "other medical evidence." *Id.* "Substantial compliance" with the applicable regulations entitles medical evidence to probative weight as valid evidence.

Secondly, medical evidence must comply with the limitations placed upon the development of medical evidence. 20 C.F.R. § 725.414. The regulations provide that claimants are limited to submitting no more than two chest x-rays, two pulmonary function tests, two arterial blood gas studies, one autopsy report, one biopsy report of each biopsy, and two medical reports as affirmative proof of their entitlement to benefits under the Act. § 725.414(a)(2)(i). Any chest x-ray interpretations, pulmonary function test results, arterial blood gas study results, autopsy reports, biopsy reports, and physician opinions that appear in one single medical report must comply individually with the evidentiary limitations. *Id.* In rebuttal to evidence propounded by an opposing party, a claimant may introduce no more than one physician's interpretation of each

chest x-ray, pulmonary function test, arterial blood gas study, biopsy, or autopsy. § 725.414 (a)(2)(ii). Likewise, responsible operators and the district director are subject to identical limitations on affirmative and rebuttal evidence. § 725.414(a)(3)(i-iii).[1]

A. X-ray reports[2]

Exhibit/ Offering Party	**Date of X-ray**	**Date of Reading**	**Physician/ Qualifications**	**Interpretation**
DX 13	11/9/01	11/9/01	Shareef, BCR	Negative, 5mm pulmonary nodule
DX 14	11/9/01	12/4/01	Gaziano, B-reader	negative
EX 1	7/31/02	10/16/02	Zaldivar, B-reader	Negative

B. Pulmonary Function Studies[3]

Exhibit/ Date	**Physician**	**Age/ Height**	**FEV_1**	**FVC**	**MVV**	**FEV_1/ FVC**	**Tracings**	**Comments**
DX 10 11/9/01	Gifford	54/ 6'2"	2.86	4.22	49	68%	Yes	
DX 10	Gifford	54/	2.73*	4.29*	79*	67%	Yes	

[1] If no responsible operator has been named, the evidence obtained in connection with the complete pulmonary evaluation performed pursuant to § 725.406 shall be considered evidence obtained and submitted by the Director.

[2] A chest x-ray may indicate the presence or absence of pneumoconiosis. 20 C.F.R. § 718.102(a,b). It is not utilized to determine whether the miner is totally disabled, unless complicated pneumoconiosis is indicated wherein the miner may be presumed to be totally disabled due to the disease.

[3] The pulmonary function study, also referred to as a ventilatory study or spirometry, indicates the presence or absence of a respiratory or pulmonary impairment. 20 C.F.R. § 718.104(c) . The regulations require that this study be conducted three times to assess whether the miner exerted optimal effort among trials, but the Board has held that a ventilatory study which is accompanied by only two tracings is in "substantial compliance" with the quality standards at § 718.204(c)(1). *Defore v. Alabama By-Products Corp*., 12 B.L.R. 1-27 (1988). The values from the FEV1 as well as the MVV or FVC must be in the record, and the highest values from the trials are used to determine the level of the miner's disability.

Exhibit/ Date	Physician	Age/ Height	FEV_1	FVC	MVV	FEV_1/ FVC	Tracings	Comments
11/9/01		6'2"						
EX 1 7/31/02	Zaldivar	55 72"	2.56	4.12	N/A	62%	Yes	Fair effort. Mild irreversible airway obstruction. Moderate diffusion impairment. High carboxyhemoglobin level of a smoker.
EX 1 7/31/02	Zaldivar	55/ 72"	1.98*	3.88*	N/A	51%	Yes	

*denotes testing after administration of bronchodilator

C. Arterial Blood Gas Studies[4]

Exhibit	Date	Physician	pCO_2	pO_2	Resting/ Exercise	Comments
DX 11	11/9/01	Gifford	36.6	59.0	Resting	This arterial blood gas study was found to be valid by Dr. Katzman. (DX 12)
EX 1	7/31/02	Zaldivar	35.0	74.0	Resting	
Ex 1	7/31/02	Zaldivar	39.0	70.0	Exercise	Exercise terminated due to back and leg pain

D. Narrative Medical Evidence

Dr. Bonnie D. Gifford examined Claimant on November 9, 2001 and completed a Medical History and Examination for Coal Workers' Pneumoconiosis form. (DX 9). Dr. Gifford noted Claimant claimed 20 years of coal mine employment history. Dr. Gifford recorded a 34-year history of smoking of one to two packs of cigarettes per day from 1966 to 2000. Claimant complained of dyspnea, chest pain, ankle edema, back and leg pain and occasional nocturnal dyspnea. Examination of Claimant's chest was unremarkable. Dr. Gifford submitted Claimant to a chest x-ray, pulmonary function study, and an arterial blood gas study. She

[4] Arterial blood-gas studies are performed to detect an impairment in the process of alveolar gas exchange. This defect will manifest itself primarily as a fall in arterial oxygen tension either at rest or during exercise. 20 C.F.R. § 718.105(a).

interpreted the chest x-ray as showing a 5 mm nodule in the right mid lung field. The pulmonary function study demonstrated a moderately severe obstructive ventilatory defect with no improvement after bronchodilation. Dr. Gifford determined that Claimant suffered from pneumoconiosis based upon his work history, symptomatology, the arterial blood gas studies, and pulmonary function studies. He had a right lung pulmonary nodule as demonstrated by the chest film. COPD was also diagnosed based upon history, symptomatology and the pulmonary function studies. Dr. Gifford opined that the etiology of these conditions were coal mine employment, smoking, and other occupational dust exposure. She stated Claimant was totally and permanently disabled from his last coal mine employment. Pneumoconiosis and COPD were 50% responsible for his impairment. Dr. Gifford was unable to determine the extent to which the pulmonary nodule contributed to Claimant's impairment nor did she offer an etiology for this nodule.

Dr. George Zaldivar, a board-certified Internal Medicine specialist, examined Claimant on July 31, 2002 and included his findings in an October 16, 2002 report. (EX 1). Dr. Zaldivar also notes he reviewed the following medical evidence submitted to him by counsel for the Employer: 1.) The X-ray reports of Dr. Gaziano and Shareef. 2.) the 11/9/01 arterial blood gas study and pulmonary function study and 3.) Dr. Gifford's report. Dr. Zaldivar conducted a physical examination, pulmonary function studies, arterial blood gas study, and chest film. Claimant's chief complaints included abdominal pain, elbow pain, back pain and shortness of breath. A smoking history of one to one and one half packs of cigarettes per day since age twenty, Claimant having quit two years ago, was also recorded. Dr. Zaldivar considered an eighteen to twenty-year coal mine employment history as a heavy equipment operator. Upon review of the other medical evidence and his own examination of the Claimant, Dr. Zaldivar stated that, based upon the high carbon monoxide level in the Claimant's blood, Claimant continued to smoke. The pulmonary function studies Dr. Zaldivar performed showed only a mild airway obstruction and that Claimant's effort on this test was fair. There was no radiographic evidence of pneumoconiosis. There was x-ray evidence of small bullae of emphysema scattered throughout both lungs. The resting arterial blood gas study was normal and the exercise arterial blood gas studyshowed mild exercise hy poxemia. Dr. Zaldivar concluded that Claimant did not suffer from occupationally acquired Pneumoconiosis. He determined Claimant has a mild pulmonary impairment caused by emphysema. This condition was solely the result of Claimant's smoking habit. Claimant also suffers from atherosclerosis, a condition also unrelated to dust exposure. Dr. Zaldivar determined that from a pulmonary standpoint, Claimant was able to perform his last coal mine employment. However, his peripheral vascular disease would prevent this employment.

E. Other Medical Evidence

The amended regulations provide that, notwithstanding the evidentiary limitations contained at 20 C.F.R. § 725.414(a)(2) and (a)(3), any record of a miner's hospitalization for respiratory or pulmonary or related disease may be received into evidence. 20 C.F.R. § 725.414 (a)(4). Furthermore, a party may submit "other medical evidence" reported by a physician and not specifically addressed under the regulations under section 718.107, such as a CT scan. The instant case does not include any such evidence.

DISCUSSION AND APPLICABLE LAW

Because Mr. Riggs filed his application for benefits after March 31, 1980, this claim shall be adjudicated under the regulations at 20 C.F.R. Part 718. Under this part of the regulations, Claimant must establish by a preponderance of the evidence that he has pneumoconiosis, that his pneumoconiosis arose from coal mine employment, that he is totally disabled, and that his total disability is due to pneumoconiosis. 20 C.F.R. § 725.202(d)(2)(i-iv). Failure to establish any of these elements precludes entitlement to benefits. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989).

Pneumoconiosis and Causation

The new regulatory provisions at 20 C.F.R. § 718.201 contain a modified definition of "pneumoconiosis" and they provide the following:

> (a) For the purposes of the Act, 'pneumoconiosis' means a chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment. This definition includes both medical, or 'clinical', pneumoconiosis and statutory, or 'legal', pneumoconiosis.
>
> (1) Clinical Pneumoconiosis. 'Clinical pneumoconiosis' consists of those diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment. This definition includes, but is not limited to, coal workers' pneumoconiosis, anthracosilicosis, anthracosis, anthrosilicosis, massive pulmonary fibrosis, silicosis or silicotuberculosis, arising out of coal mine employment.
>
> (2) Legal Pneumoconiosis. 'Legal pneumoconiosis' includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. This definition includes, but is not limited to, any chronic restrictive or obstructive pulmonary disease arising out of coal mine employment.
>
> (b) For purposes of this section, a disease 'arising out of coal mine employment' includes any chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment.
>
> (c) For purposes of this definition, 'pneumoconiosis' is recognized as a latent and progressive disease which may first become detectable only after the cessation of coal mine dust exposure.

20 C.F.R. § 718.201 (Dec. 20, 2000). Section 718.202(a) provides four methods for determining the existence of pneumoconiosis. Each shall be addressed in turn.

Under section 718.202(a)(1), a finding of pneumoconiosis may be based upon x-ray evidence. Because pneumoconiosis is a progressive disease, I may properly accord greater weight to the interpretations of the most recent x-rays, especially where a significant amount of time separates the newer from the older x-rays. *Clark v. Karst-Robbins Coal Co.*, 12 B.L.R. 1-149 (1989)(en banc); *Casella v. Kaiser Steel Corp.*, 9 B.L.R. 1-131 (1986). As noted above, I also may assign heightened weight to the interpretations by physicians with superior radiological qualifications. *See McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Clark*, 12 BLR 1-149 (1989).

The record contains three interpretations of two chest x-rays. Of these interpretations, all were negative for pneumoconiosis.

The issue of numerical superiority often arises with regard to evaluating medical evidence. The Board has held that an administrative law judge is not required to defer to the numerical superiority of medical evidence, *Wilt v. Wolverine Mining Co.*, 14 B.L.R. 1-70 (1990), although it is within his or her discretion to do so, *Edmiston v. F & R Coal Co.*, 14 B.L.R. 1-65 (1990). *See also Schetroma v. Director, OWCP*, 18 B.L.R. 1-19 (1993) (use of numerical superiority upheld in weighing blood gas studies); *Tokaricik v. Consolidation Coal Co.*, 6 B.L.R. 1-666 (1984) (the judge properly assigned greater weight to the positive x-ray evidence of record, notwithstanding the fact that the majority of x-ray interpretations in the record, including all of the B-reader reports, were negative for existence of the disease).

Because the negative readings constitute all of the interpretations and are verified by more, highly-qualified physicians, I find that the x-ray evidence is negative for pneumoconiosis.

Under Section 718.202(a)(2), a claimant may establish pneumoconiosis through biopsy or autopsy evidence. This section is inapplicable herein because the record contains no such evidence.

Under Section 718.202(a)(3), a claimant may prove the existence of pneumoconiosis if one of the presumptions at Sections 718.304 to 718.306 applies. Section 718.304 requires x-ray, biopsy, or equivalent evidence of complicated pneumoconiosis. Because the record contains no such evidence, this presumption is unavailable. The presumptions at Sections 718.305 and 718.306 are inapplicable because they only apply to claims that were filed before January 1, 1982, and June 30, 1982, respectively. Because none of the above presumptions applies to this claim, claimant has not established pneumoconiosis pursuant to Section 718.202(a)(3).

Section 718.202(a)(4) provides the fourth and final way for a claimant to prove that he has pneumoconiosis. Under section 718.202(a)(4), a claimant may establish the existence of the disease if a physician exercising reasoned medical judgment, notwithstanding a negative x-ray, finds that he suffers from pneumoconiosis. Although the x-ray evidence is negative for pneumoconiosis, a physician's reasoned opinion may support the presence of the disease if it is supported by adequate rationale besides a positive x-ray interpretation. *See Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-89 (1993); *Taylor v. Director, OWCP*, 1-22, 1-24 (1986). The

weight given to each medical opinion will be in proportion to its documented and well-reasoned conclusions.

A "documented" opinion is one that sets forth the clinical findings, observations, facts and other data on which the physician based the diagnosis. *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984). A report may be adequately documented if it is based on items such as a physical examination, symptoms and patient's history. *See Hoffman v. B & G Construction Co.*, 8 BLR 1-65 (1985); *Hess v. Clinchfield Coal Co.*, 7 BLR 1-295 (1984); *Buffalo v. Director*, OWCP, 6 BLR 1-1164, 1-1166 (1984); *Gomola v. Manor Mining and Contracting Corp*., 2 BLR 1-130 (1979).

A "reasoned" opinion is one in which the underlying documentation and data are adequate to support the physician's conclusions. *See Fields, supra*. The determination that a medical opinion is "reasoned" and "documented" is for this Court to determine. *See Clark v. Karst-Robbins Coal Co.*, 12 B.L.R. 1-149 (1989)(en banc). An unsupported medical conclusion is not a reasoned diagnosis. *Fuller v. Gibraltar Corp.*, 6 B.L.R. 1-1292 (1984). *See also Phillips v. Director, OWCP*, 768 F.2d 982 (8th Cir. 1985); *Smith v. Eastern Coal Co.* , 6 B.L.R. 1-1130 (1984); *Duke v. Director, OWCP*, 6 B.L.R. 1-673 (1983) (a report is properly discredited where the physician does not explain how underlying documentation supports his or her diagnosis); *Waxman v. Pittsburgh & Midway Coal Co.*, 4 B.L.R. 1-601 (1982).

Reviewing the medical narrative evidence of record, I assign greater probative weight to the opinion of Dr. Zaldivar as I find his opinion to be well-reasoned and well-documented. Dr. Zaldivar is a highly credentialed physician, being board-certified in Internal Medicine. Dr. Zaldivar had not only the opportunity to personally examine the Claimant and perform testing, but was also able to review the entire medical record submitted in this case. His findings take into consideration both the objective laboratory testing and the Claimant's pertinent medical, social and occupational histories.

I assign less probative weight to the opinion of Dr. Gifford. In her report, Dr. Gifford stated she diagnosed pneumoconiosis and COPD based upon symptomatology, history, and the results of the ABG and PFT. In *Burke v. Director, OWCP*, 3 B.L.R. 1-410 (1981), the Board held that pulmonary function studies are not diagnostic of the presence or absence of pneumoconiosis. *In Morgan v. Bethlehem Steel Corp*., 7 B.L.R. 1-226 (1984), the Board held that while blood gas studies are relevant primarily to the determination of the existence or extent of impairment, such evidence "also may bear upon the existence of pneumoconiosis insofar as test results indicate the absence of any disease process, and by implication, the absence of any disease arising out of coal mine employment." Dr. Gifford's report is devoid of any further explanation regarding these tests results other than test result numbers themselves. As such, I find here reliance on the results of the ABG and PFT in diagnosing pneumoconiosis and COPD entitled to less probative weight. Without further basis beyond symptomatology and history, I find Dr. Gifford's overall findings to be neither well-reasoned nor well-documented.

The claimant has failed to demonstrate, by a preponderance of the evidence, the existence of pneumoconiosis under any of the methods contained in section 718.202(a). As the evidence does not establish the existence of pneumoconiosis, this claim cannot succeed.

Total Disability Due to Pneumoconiosis

A miner is considered totally disabled when his pulmonary or respiratory condition prevents him from performing his usual coal mine work or comparable work. 20 C.F.R. § 718.204(b)(1). Non-respiratory and non-pulmonary impairments have no bearing on a finding of total disability. *See Beatty v. Danri Corp.*, 16 BLR 1-11, 1-15 (1991). Section 718.204(b)(2) provides several criteria for establishing total disability. Under this section, I must first evaluate the evidence under each subsection and then weigh all of the probative evidence together, both like and unlike evidence, to determine whether claimant has established total respiratory disability by a preponderance of the evidence. *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1987).

Under Sections 718.204(b)(2)(i) and (b)(2)(ii), total disability may be established with qualifying pulmonary function tests or arterial blood gas studies.[5]

In the pulmonary function studies of record, there is a discrepancy in the height attributed to the claimant. The fact-finder must resolve conflicting heights of the miner recorded on the ventilatory study reports in the claim. *Protopappas v. Director, OWCP*, 6 B.L.R. 1- 221 (1983). *See also Toler v. Eastern Assoc. Coal Co.*, 43 F.3d 109 (4th Cir. 1995). In analyzing the pulmonary function test results, I shall utilize the average height reported for Claimant, or 73 inches.

All ventilatory studies of record, both pre-bronchodilator and post-bronchodilator, must be weighed. *Strako v. Ziegler Coal Co.*, 3 B.L.R. 1-136 (1981). To be qualifying, the FEV_1 as well as the MVV or FVC values must equal or fall below the applicable table values. *Tischler v. Director, OWCP*, 6 B.L.R. 1-1086 (1984). I must determine the reliability of a study based upon its conformity to the applicable quality standards, *Robinette v. Director, OWCP*, 9 B.L.R. 1- 154 (1986), and must consider medical opinions of record regarding reliability of a particular study. *Casella v. Kaiser Steel Corp.*, 9 B.L.R. 1-131 (1986). In assessing the reliability of a study, I may accord greater weight to the opinion of a physician who reviewed the tracings. *Street v. Consolidation Coal Co.*, 7 B.L.R. 1-65 (1984). Because tracings are used to determine the reliability of a ventilatory study, a study which is not accompanied by three tracings may be discredited. *Estes v. Director, OWCP*, 7 B.L.R. 1-414 (1984). If a study is accompanied by three tracings, then I may presume that the study conforms unless the party challenging conformance submits a medical opinion in support thereof. *Inman v. Peabody Coal Co.*, 6 B.L.R. 1-1249

[5]A "qualifying" pulmonary function study or arterial blood gas study yields values that are equal to or less than the applicable table values found in Appendices B and C of Part 718. *See* 20 C.F.R. § 718.204(b)(2)(i) and (ii). A "non-qualifying" test produces results that exceed the table values.

(1984). Also, little or no weight may be accorded to a ventilatory study where the miner exhibited "poor" cooperation or comprehension. *See, e.g., Houchin v. Old Ben Coal Co.*, 6 B.L.R. 1-1141 (1984).

The pulmonary function tests submitted in this claim conform to the applicable quality standards. The tests did not produce qualifying values, however. Accordingly, I find they present probative evidence weighing against a finding that Claimant is totally disabled.

All blood gas study evidence of record must be weighed. *Sturnick v. Consolidation Coal Co.*, 2 B.L.R. 1-972 (1980). This includes testing conducted before and after exercise. *Coen v. Director, OWCP*, 7 B.L.R. 1-30 (1984). In order to render a blood gas study unreliable, the party must submit a medical opinion that a condition suffered by the miner, or circumstances surrounding the testing, affected the results of the study and, therefore, rendered it unreliable. *Vivian v. Director, OWCP*, 7 B.L.R. 1-360 (1984) (miner suffered from several blood diseases); *Cardwell v. Circle B Coal Co.*, 6 B.L.R. 1-788 (1984) (miner was intoxicated).

The arterial blood gas studies submitted in this claim conform to the applicable quality standards. Only one test of record produce qualifying values, however. The more recent test of record produced values which are not indicative of total disability. Accordingly, I find they present probative evidence weighing against a finding that Claimant is totally disabled.

Section 718.204(b)(2)(iii) provides that a claimant may prove total disability through evidence establishing cor pulmonale with right-sided congestive heart failure. This section is inapplicable to this claim because the record contains no such evidence.

Where a claimant cannot establish total disability under subparagraphs (b)(2)(i), (ii), or (iii), Section 718.204(b)(2)(iv) provides another means to prove total disability. Under this section, total disability may be established if a physician exercising reasoned medical judgment, based on medically acceptable clinical and laboratory diagnostic techniques, concludes that a respiratory or pulmonary impairment prevents the miner from engaging in his usual coal mine work or comparable and gainful work.

The weight given to each medical opinion will be in proportion to its documented and well-reasoned conclusions. A "documented" opinion is one that sets forth the clinical findings, observations, facts and other data on which the physician based the diagnosis. *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984). A report may be adequately documented if it is based on items such as a physical examination, symptoms and patient's history. *See Hoffman v. B & G Construction Co.*, 8 BLR 1-65 (1985); *Hess v. Clinchfield Coal Co.*, 7 BLR 1-295 (1984); *Buffalo v. Director*, OWCP, 6 BLR 1-1164, 1-1166 (1984); *Gomola v. Manor Mining and Contracting Corp*., 2 BLR 1-130 (1979). A "reasoned" opinion is one in which the underlying documentation and data are adequate to support the physician's conclusions. *See Fields, supra*. The determination that a medical opinion is "reasoned" and "documented" is for this Court to determine. *See Clark v. Karst-Robbins Coal Co.*, 12 B.L.R. 1-149 (1989)(en banc).

In assessing total disability under § 718.204(b)(2)(iv), the administrative law judge, as the fact-finder, is required to compare the exertional requirements of the claimant's usual coal mine employment with a physician's assessment of the claimant's respiratory impairment. *Budash v. Bethlehem Mines Corp.*, 9 B.L.R. 1-48, 1-51 (holding medical report need only describe either severity of impairment or physical effects imposed by claimant's respiratory impairment sufficiently for administrative law judge to infer that claimant is totally disabled). Once it is demonstrated that the miner is unable to perform his or her usual coal mine work, a prima facie finding of total disability is made and the party opposing entitlement bears the burden of going forth with evidence to demonstrate that the miner is able to perform "comparable and gainful work" pursuant to § 718.204(c)(2). *Taylor v. Evans & Gambrel Co.*, 12 B.L.R. 1-83 (1988).

If Claimant demonstrates that he suffers from a totally disabling respiratory or pulmonary impairment, he must next establish that his total disability is due to pneumoconiosis. 20 C.F.R. § 718.204(c)(1). To satisfy this requirement, Claimant must demonstrate that his pneumoconiosis is a "substantially contributing cause" of his totally disabling respiratory or pulmonary impairment. *Id.* Pneumoconiosis is a "substantially contributing cause" of the miner's disability if it:
(i) has a material adverse effect on the miner's respiratory or pulmonary condition; or
(ii) materially worsens a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment. *Id.* Claimant can only demonstrate the cause of his total disability by means of a physician's documented and well-reasoned medical report. 20 C.F.R. § 718.204(c)(2).

Upon review of the medical narrative evidence of record, I find that Claimant has established he is totally disabled, however, this disability is not the result of an occupationally acquired pulmonary or respiratory condition. Both Dr. Gifford and Dr. Zaldivar found that Claimant was unable to perform his last coal mine employment. Dr. Zaldivar reasoned that Claimant had a mild pulmonary impairment that would not prevent his last coal mine employment but was totally disabled due to heart disease, a condition unrelated to his coal mine employment. What impairment Claimant did suffer from was due solely to his lengthy smoking history. Dr. Gifford concluded that Claimant's total disability was 50% due to COPD and pneumoconiosis. Reviewing these opinions, I assign greater probative weight to the findings of Dr. Zaldivar. I find his report to be well-reasoned and well-documented. Dr. Zaldivar considers and explains how the various conditions from which Claimant suffers have impacted his overall pulmonary health. I find that Dr. Gifford's notation that COPD and pneumoconiosis have contributed 50% to Claimant's disability is not a finding of total disability due to those conditions. This 50% designation does not meet the regulatory requirement that pneumoconiosis be a "substantially contributing cause" of Claimant's impairment.

At the hearing, Claimant testified that he worked as a heavy equipment operator, primarily running bull dozers at strip mining sites. (Tr. 10-13) In their respective medical reports both Drs. Gifford and Zaldivar consider the exertional requirements of Claimant's last coal mine employment that Claimant provided to both physicians.

In reviewing the results of the arterial blood gas studies , pulmonary function studies , and the medical narrative evidence in conjunction, I find that Claimant has failed to establish

total disability due to pneumoconiosis. As is discussed above, the arterial blood gas studies and pulmonary function studies failed to produce values indicative of total disability. Dr. Zaldivar opined that while Claimant cannot return to his last coal mine employment, this is due to heart disease rather than an occupationally acquired condition. Dr. Gifford found Claimant totally disabled, but only assigned 50% causation to occupationally acquired conditions. In totality, I find that the evidence of record does not support a finding of total disability due to pneumoconiosis.

Conclusion

In sum, the evidence does not establish the existence of pneumoconiosis or a totally disabling respiratory impairment. Accordingly, the claim of Raymond Riggs must be denied.

Attorney's Fee

The award of an attorney's fee is permitted only in cases in which the claimant is found to be entitled to benefits. Because benefits are not awarded in this case, the Act prohibits the charging of any fee to claimant for legal services rendered in pursuit of the claim.

ORDER

The claim of Raymond Riggs for benefits under the Act is denied.

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JOSEPH E. KANE
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: Pursuant to 20 C.F.R. § 725.481, any party dissatisfied with this Decision and Order may appeal it to the Benefits Review Board within thirty days from the date of this decision by filing a Notice of Appeal with the Benefits Review Board at P.O. Box 37601, Washington D.C. 20013-7601. This decision shall be final thirty days after the filing of this decision with the district director unless appeal proceedings are instituted. 20 C.F.R. § 725.479. A copy of this Notice of Appeal must also be served on Donald S. Shire, Associate Solicitor for Black Lung Benefits, 200 Constitution Avenue, N.W., Room N-2117, Washington, D.C. 20210.